

<b>JONATHAN ABBOT</b>	)	
Claimant	)	
V.	)	
	)	
<b>SOUTHWIRE COMPANY</b>	)	Docket No. 1,069,946
Respondent	)	
AND	)	
	)	
<b>OLD REPUBLIC INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

Respondent and insurance carrier (respondent), by and through Douglas C. Hobbs of Wichita, request review of Administrative Law Judge Bruce E. Moore's August 14, 2014 preliminary hearing Order. Mitchell W. Rice of Hutchinson appeared for claimant.

## ISSUES

Judge Moore ordered claimant be evaluated by Daniel Prohaska, M.D., for his opinions regarding, *inter alia*, diagnosis, treatment recommendations, claimant's ability to work and whether claimant's accident was the prevailing factor causing his injury, need for treatment or resulting impairment. The Order did not address the compensability of the claim.

Respondent argues claimant's injury did not arise out of and in the course of his employment. Respondent asserts claimant's injury was the result of normal activities of day-to-day living, a neutral risk or a personal risk. In the alternative, respondent asserts claimant's preexisting condition was rendered symptomatic or aggravated by the alleged work incident. Claimant did not file a brief in this appeal.

The only issue for Board review is: Does the Board have jurisdiction to review the preliminary hearing Order?

### PRINCIPLES OF LAW & ANALYSIS

The Board's review of preliminary hearing orders is limited. The Board can review only allegations that a judge exceeded his or her jurisdiction,<sup>1</sup> including review of jurisdictional issues listed in K.S.A. 2013 Supp. 44-534a(a)(2): (1) did the worker sustain accidental injury or injury by repetitive trauma; (2) did the injury arise out of and in the course of employment; (3) did the worker provide timely notice; and (4) do certain other defenses apply. "Certain defenses" refer to defenses which dispute the compensability of the injury.<sup>2</sup>

The Board also only reviews "decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act . . . upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge."<sup>3</sup>

The judge issued an interlocutory order for an independent medical evaluation, which is within his authority under K.S.A. 2013 Supp. 44-516(a). The judge did not address compensability. The Board does not have jurisdiction to rule on issues not addressed by the judge.<sup>4</sup> This Board Member declines respondent's request that the Board address compensability in advance of the judge doing so.

### CONCLUSION

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member concludes: (1) the Board is without jurisdiction to entertain respondent's appeal of an interlocutory order; and (2) the Board is without jurisdiction to entertain the issue of compensability because no order to this effect was ruled upon by the judge. When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.

**WHEREFORE**, the undersigned Board Member dismisses respondent's appeal of the August 14, 2014 preliminary hearing Order.<sup>5</sup>

---

<sup>1</sup> K.S.A. 2013 Supp. 44-551(l)(2)(A).

<sup>2</sup> *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

<sup>3</sup> K.S.A. 2013 Supp. 44-555c(a).

<sup>4</sup> See *Mezquita v. Tyson Fresh Meats, Inc.*, No. 1,042,398, 2013 WL 4779974 (Kan. WCAB Aug. 16, 2013).

<sup>5</sup> By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim. Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September, 2014.

---

HONORABLE JOHN F. CARPINELLI  
BOARD MEMBER

ec: Mitchell W. Rice  
mwr@mannlaw.kscoxmail.com  
clb@mannlaw.kscoxmail.com  
slink@mannlawoffices.com

Douglas C. Hobbs  
dch@wsabe.com  
jkibbe@wallacesaunders.com  
lalter@wallacesaunders.com

Honorable Bruce E. Moore